

(i) *Recalling firm* means the firm that initiates a recall or, in the case of a Food and Drug Administration-requested recall, the firm that has primary responsibility for the manufacture and marketing of the product to be recalled.

(j) *Market withdrawal* means a firm's removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by the Food and Drug Administration or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

(k) *Stock recovery* means a firm's removal or correction of a product that has not been marketed or that has not left the direct control of the firm, i.e., the product is located on premises owned by, or under the control of, the firm and no portion of the lot has been released for sale or use.

(l) *Recall strategy* means a planned specific course of action to be taken in conducting a specific recall, which addresses the depth of recall, need for public warnings, and extent of effectiveness checks for the recall.

(m) *Recall classification* means the numerical designation, i.e., I, II, or III, assigned by the Food and Drug Administration to a particular product recall to indicate the relative degree of health hazard presented by the product being recalled.

(1) Class I is a situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death.

(2) Class II is a situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.

(3) Class III is a situation in which use of, or exposure to, a violative product is not likely to cause adverse health consequences.

(n) *Consignee* means anyone who received, purchased, or used the product being recalled.

[42 FR 15567, Mar. 22, 1977, as amended at 43 FR 26218, June 16, 1978; 44 FR 12167, Mar. 6, 1979]

§ 7.12 Guaranty.

In case of the giving of a guaranty or undertaking referred to in section 303(c)(2) or (3) of the act, each person signing such guaranty or undertaking shall be considered to have given it.

§ 7.13 Suggested forms of guaranty.

(a) A guaranty or undertaking referred to in section 303(c)(2) of the act may be:

(1) Limited to a specific shipment or other delivery of an article, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or

(2) General and continuing, in which case, in its application to any shipment or other delivery of an article, it shall be considered to have been given at the date such article was shipped or delivered by the person who gives the guaranty or undertaking.

(b) The following are suggested forms of guaranty or undertaking under section 303(c)(2) of the act:

(1) Limited form for use on invoice or bill of sale.

(Name of person giving the guaranty or undertaking) hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or is an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

(Signature and post-office address of person giving the guaranty or undertaking.)

(2) General and continuing form.

The article comprising each shipment or other delivery hereafter made by (name of person giving the guaranty or undertaking) to, or in the order of (name and post-office address of person to whom the guaranty or undertaking is given) is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and not an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

(Signature and post-office address of person giving the guaranty of undertaking.)

(c) The application of a guaranty or undertaking referred to in section 303(c)(2) of the act to any shipment or other delivery of an article shall expire when such article, after shipment or delivery by the person who gave such

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guaranty or undertaking, becomes adulterated or misbranded within the meaning of the act, or becomes an article which may not, under the provisions of section 404, 505, or 512 of the act, be introduced into interstate commerce.

(d) A guaranty or undertaking referred to in section 303(c)(3) of the act shall state that the shipment or other delivery of the color additive covered thereby was manufactured by a signer thereof. It may be a part of or attached to the invoice or bill of sale covering such color. If such shipment or delivery is from a foreign manufacturer, such guaranty or undertaking shall be signed by such manufacturer and by an agent of such manufacturer who resides in the United States.

(e) The following are suggested forms of guaranty or undertaking under section 303(c)(3) of the act:

(1) For domestic manufacturers:

(Name of manufacturer) hereby guarantees that all color additives listed herein were manufactured by him, and (where color additive regulations require certification) are from batches certified in accordance with the applicable regulations promulgated under the Federal Food, Drug, and Cosmetic Act.

(Signature and post-office address of manufacturer.)

(2) For foreign manufacturers:

(Name of manufacturer and agent) hereby severally guarantee that all color additives listed herein were manufactured by (name of manufacturer), and (where color additive regulations require certification) are from batches certified in accordance with the applicable regulations promulgated under the Federal Food, Drug, and Cosmetic Act.

(Signature and post-office address of manufacturer.)

(Signature and post-office address of agent.)

(f) For the purpose of a guaranty or undertaking under section 303(c)(3) of the act the manufacturer of a shipment or other delivery of a color additive is the person who packaged such color.

(g) A guaranty or undertaking, if signed by two or more persons, shall state that such persons severally guarantee the article to which it applies.

(h) No representation or suggestion that an article is guaranteed under the act shall be made in labeling.

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Subpart B [Reserved]

Subpart C—Recalls (Including Product Corrections)—Guidance on Policy, Procedures, and Industry Responsibilities

SOURCE: 43 FR 26218, June 16, 1978, unless otherwise noted.

§ 7.40 Recall policy.

(a) Recall is an effective method of removing or correcting consumer products that are in violation of laws administered by the Food and Drug Administration. Recall is a voluntary action that takes place because manufacturers and distributors carry out their responsibility to protect the public health and well-being from products that present a risk of injury or gross deception or are otherwise defective. This section and §§ 7.41 through 7.59 recognize the voluntary nature of recall by providing guidance so that responsible firms may effectively discharge their recall responsibilities. These sections also recognize that recall is an alternative to a Food and Drug Administration-initiated court action for removing or correcting violative, distributed products by setting forth specific recall procedures for the Food and Drug Administration to monitor recalls and assess the adequacy of a firm's efforts in recall.

(b) Recall may be undertaken voluntarily and at any time by manufacturers and distributors, or at the request of the Food and Drug Administration. A request by the Food and Drug Administration that a firm recall a product is reserved for urgent situations and is to be directed to the firm that has primary responsibility for the manufacture and marketing of the product that is to be recalled.

(c) Recall is generally more appropriate and affords better protection for consumers than seizure, when many lots of product have been widely distributed. Seizure, multiple seizure, or other court action is indicated when a firm refuses to undertake a recall requested by the Food and Drug Administration, or where the agency has reason to believe that a recall would not be effective, determines that a recall is